IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.242 OF 2007

TPS Builders Limited .. Petitioners.

Versus

Hindustan Petroleum Corporation Ltd. .. Respondents.

Mr.Birendra Saraf with Ms.Arti Birje i/b.Khaitan & Jayakar for petitioners.

Mr.Siodia i/b.M/s.Rustamji & Ginwala for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th September, 2007.

P.C.:

1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 by a contractor whose contract has come to an end with the Hindustan Petroleum Corporation Limited.

2. Both sides do not dispute that the contract contains a stipulation with regard to the arbitration for resolving the inter se disputes. Both sides do not dispute that an Arbitrator has been indeed appointed by

the Corporation and his appointment is acceptable to the parties.

3. It is also not in dispute that the parties would be appearing before the Arbitrator and submitting their rival versions so also claims and counter claims.

4. However, the contractor states that there is some material lying at site which admittedly belongs to the contractor. It was brought at site for the purposes of carrying out the works in terms of the contract. Further, there are documents and files which are also lying with the Corporation.

5. The Corporation has filed an affidavit in which the deponent states that the contract has been terminated on 11th June, 2007. Mr.V.S.Rao has been appointed as a Sole Arbitrator on 13th August, 2007. On 14th August, 2007, the Corporation wrote to the petitioners requesting them to handover the materials belonging to the respondents as per the list annexed to the letter dated 14th August, 2007.

6. There is a dispute with regard to the identity of the material lying at site. In other words, the parties

do not admit that the material lying at site either belongs to the petitioner or to the Corporation. Further, the complaint of Mr.Siodia is that some material belonging to the Corporation is taken away by the contractor and whereabouts of which are not disclosed. In my view, the Arbitrator having been appointed, the parties must approach him with a request that suitable interim measures be made, more so, considering the nature of the material and the papers, documents and files being involved.

7. The parties to appear before the Arbitral Tribunal on 5th October, 2007. Needless to state that the Arbitral Tribunal is at liberty to seek assistance of the Project Manager at site and would also be at further liberty to visit the site in question. Both sides to furnish the list of the materials, documents, papers and files and after due scrutiny, verification and inventory thereof in the presence of the Project Manager of the respondents and authorised officer of the petitioners, the Arbitral Tribunal to make interim measures within a period of three weeks from the date, the site visit is complete.

8. Mr.Siodia states that the petitioners would also handover a list of the materials, if any, belonging to the Corporation and available at site or elsewhere before the

date of appearance. Equally, Mr.Siodia states that the Corporation would forward a list of the materials belonging to it and lying with the petitioners, additionally. All contentions of both sides in that behalf are expressly kept open.

9. Petition disposed of.

(S.C.Dharmadhikari, J.)